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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,952	11/13/2003	Leon LaHay	221P6US	6709
20577	7590	08/26/2005	EXAMINER	
LONG AND CAMERON SUITE 1401 - 1166 ALBERNI STREET VANCOUVER, BC V6E 3Z3 CANADA			HUYNH, KHOA D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/705,952

Applicant(s)

LAHAY, LEON

Examiner

Khoa D. Huynh

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/13/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: first and second end portions as recited in claim 1 and the lifting bars as recited in claim 1.

Claim Objections

2. Claim 3 is objected to because of the following informalities: line 3, the recitation "the respective lifting arm" should read --the respective lifting arms--. Appropriate correction is suggested.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitations "said opposite end portions", "said lifting bars" and "the spa cover engagement bar" in lines 5, 7 and 8, respectively. There is insufficient antecedent basis for these limitations in the claim. Claim 2-6 depend on claim 1 and are likewise indefinite.

Claim 1 recites the limitations "said tension springs" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitations "each of said tension springs" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Claims 4 and 5 depend on claim 3 and are likewise indefinite.

In regard to claim 6, the recitation "means for securing said spring enclosures to opposite sides of a spa housing" is inferentially included as part of the claimed combination of elements (the spa cover, the spa cover remover and the spa housing). Should applicant intend the "spa housing" to be a positive element of the claimed combination, then antecedent basis should be provided therefor. If not, it is suggested that applicant adopts language such as --adapted to be-- when relating claimed elements to the "spa housing".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-11, as presently and best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Wall et al. (5048153).

Regarding claim 1, the Wall et al. reference discloses a spa cover lifting mechanism (Fig. 2). The mechanism includes a pair of lifting arms (at 45). The lifting arms have first end portions (about 53) pivotally mounted at opposite sides of the spa cover and opposition second end portions. A spa cover engagement structure(s) (at 69,24 on each side) arrange(s) at said opposite second end

portions for lifting engagement with the spa cover (13). Spring means (at 51) connects to the first end portion (via element 47) of the lifting arms for biasing the lifting arms for pivotal movement to raise the spa cover engagement structures and therewith the spa cover. A spring enclosure (at 65) encloses the spring means.

Regarding claim 2, the mechanism also includes means for longitudinally (49) adjusting the position and tension of the spring means (51).

Regarding claim 3, each of the spring means (51) includes a first end (the end portion away from element 49), a link (47) connecting the first end to the first end portion ((about 53) of the respective lifting arms, a second end (the end adjacent element 49) and a connection (at 49) anchoring the second end.

Regarding claim 4, each of the connections (at 49) is adjustable to vary the positions and tensions of each of the second ends of the spring means.

Regarding claim 5, the connections are longitudinally adjustable connections between the spring means (51) and spring enclosure (at 65).

Regarding claim 6, the mechanism also includes means for securing (27) the spring enclosure (via connecting elements 55, 31) to opposite sides of the spa housing and pivotal connections between the first end portions of the lifting arms and respective ones of the spring enclosures.

Regarding claim 7, the Wall et al. reference discloses a spa cover lifting mechanism (Fig. 2). The mechanism includes a pair of lifting arms (at 45) and a pair of supports (at 27). The supports and lifting arms are pivotally connected to

one another. The mechanism also includes a pair of tension springs (51), each having opposite first and second ends. The tension springs are contained in a pair of elongate housing (at 65). The mechanism also includes connections (at 49,50) between the first ends of the springs and the housings, and linkages (at 47) between the second ends of the springs and the lifting arms.

Regarding claim 8, the connections are adjustable longitudinally of the housings (at 65).

Regarding claim 9, as schematically shown in Figure 3, the connection each includes a threaded adjustment member (at 50).

Regarding claim 10, the housing each has a housing end (the end adjacent element 67) remote from the respective ones of the lifting arms and an end closure (at 63) on the housing end, wherein the connections (at 49,50) include threaded adjustment members (at 50) anchored in the end closure.

Regarding claim 11, as schematically shown in Figure 3, the supports (at 27) are secured to end of the elongated housing (via element 53) and the pivotal connections are proximate to and spaced from the respective ends of the lifting arms. The mechanism also includes pivotal connections (about 31) at the ends of the lifting arms and the pivotal connections connecting the linkages (at 47) to the lifting arms.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Perry was cited to show a spa cover and a spa cover lifting

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device having lifting arms and a spring, wherein the tension of the spring is longitudinally adjustable. Sayler, Burke and Kiefer were cited to show a lid/cover lifting assembly having adjustable tension spring assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh
Primary Examiner
Art Unit 3751

HK
08/24/2005